

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4481 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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BABUBHAI DEVJIBHAI PARMAR

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr. D.P. Shah.A.G.P. for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/11/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. Subhadraben G. Patel  
for the petitioner and learned A.G.P. Mr. D.P. Joshi  
for the respondents nos.1, 2 and 3.

1. The detention order dated 6-1-1999 passed by the  
respondent no.2-Commissioner of Police, Ahmedabad City  
against the petitioner in exercise of powers conferred  
under Section 3(1) of the Gujarat Prevention of

Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention, supplied to the petitioner and produced at Annexure "B" inter alia indicate that four prohibition cases and two criminal cases for the offences made punishable under the Indian Penal Code are filed against the petitioner at Dani Limbda Police Station in between 15-4-1998 to 16-12-1998. Over and above that, two witnesses on assurance of anonymity have supplied information in respect to bootlegging and negarious criminal activity of the petitioner.

3. That in consideration of the above stated material, the respondent no.2 as detaining authority has come to the conclusion that the petitioner is "bootlegger" within the meaning of Section 2(b) of "PASA" and also a " dangerous person" within the meaning of Section 2(c) of "PASA". That resort to enforcement of general law not being sufficient to prevent the petitioner from continuing his antisocial activity, it is necessary to pass the detention order under "PASA" and hence, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the Bar on behalf of the petitioner that the petitioner was in judicial custody on the date of passing the impugned order and the impugned order has been passed on the apprehension of the petitioner getting himself released on bail. That the detaining authority has failed to consider the aspect of less drastic remedy of cancellation of bail available under Section 437(5) of the CR.P.C. which shows non application of mind rendering the impugned order invalid.

5. Reliance is placed on the observations made in the matter of ZUBEDABIBI RASIDKAN PATHAN VS. STATE OF GUJARAT & ORS. 1995(2) G.L.R. 1134 wherein the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the Cr.P.C. claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction thus rendering the detention order bad in law.

6. On scrutiny of papers, it appears that the detaining authority has observed in the penultimate

paragraph of the grounds of detention to the effect that though the petitioner is in judicial custody, it is likely that the petitioner might apply for bail at any time and get himself released on bail and thereafter he might continue his nefarious antisocial activity, and as such, in order to prevent the petitioner forthwith, the impugned order is passed.

7. The grounds of detention does not disclose any fact or observation from which it could be inferred that the detaining authority has ever considered the aspect of cancellation of bail as available under Section 437(5) of the Cr.P.C. That the observations made in the matter of ZUBEDABIBI (Supra) has been approved and followed in the proceedings of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram: C.K. Thakkar & A.L.Dave,JJ.). That in the instant case, the detaining authority appears to have proceeded on the basis of apprehension that though the petitioner is in judicial custody he might apply for bail at any time and get himself released on bail on certain conditions and thereafter continue his nefarious antisocial activity. This clearly suggests that the approach of the detaining authority cannot be said to be proper while exercising powers under Section 3(1) of "PASA". Thus, on account of non consideration less drastic remedy, the subjective satisfaction reached by the detaining authority stands vitiated rendering the impugned order invalid.

8. As the petition succeeds on the abovestated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

9. On the basis of the aforsaid discussion, the petition is allowed. The impugned order of detention dated 6-1-1999 passed by the respondent no.2-Police Commissioner, Ahmedabad City against the petitioner is hereby quashed and set aside. The petitioner-detenu-Babubhai Devjibhai Parmar is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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